Supreme Court, U.S.
FILED

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No.:

In the Supreme Court of the United States

October Term, 1998

Maria Baxter, et al

Petitioners

v.

Holy Cross Hospital
of Silver Spring, Inc., et al

Respondents

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

When a claim is brought pursuant to the Emergency Medical Treatment and Active Labor Act for improper transfer under 42 U.S.C. § 1395dd(c), need a claimant demonstrate that he was simply "in a hospital" at the time of the alleged wrongful transfer or must he show that he was recently admitted through an emergency department?

Parties To The Proceeding

The petitioners are Maria Baxter, Helen Scafidi, and the estate of Leo Scafidi. The respondents are Holy Cross Hospital of Silver Spring, Inc., Manor Healthcare Corp., Stephen Vaccareza, M.D., Stephen Hellman, M.D., Ronald Schumacher, Kathy Waters, Amy Jacobs, and Jane Doe, R.N. Petitioners are not aware of any parent companies or nonwholly owned subsidiaries required to be disclosed pursuant to Rule 29.6.

Table of Contents

	Page
OPINIONS BELOW	1
JURISDICTION	1
RULE INVOLVED	1
STATEMENT	2
REASON FOR GRANTING PETITION	4
A. The Fourth Circuit Misapplied Case Law Dealing With Other EMTALA Subsections . . .	4
B. Disparate Interpretation of 42 U.S.C. § 1395dd(c) .	6
CONCLUSION	8

TABLE OF AUTHORITIES

Cases	Page
Bryan v. Rectors and Visitors of Univ. of Va., 95 F.3d 349 (4th Cir. 1996) . . .	4
Helton v. Phelps County Regional Med. Ctr., 817 F. Supp. 789, 791 (E.D. Mo. 1993) . . .	7
James v. Sunrise Hosp., 86 F.3d 885 (9th Cir. 1996) . . .	7
McIntyre v. Schick, 795 F. Supp. 777 (E.D. Va. 1992) . . .	6
Smith v. Richmond Mem. Hosp., 416 S.E.2d 689 (Va. 1992) .	6
Thornton v. Southwest Detroit Hosp., 895 F.2d 1131 (6th Cir. 1990)	7
Vickers v. Nash Gen. Hosp., Inc., 78 F.3d 139 (4th Cir. 1996)	4,5
Statutes	
42 U.S.C. § 1395dd . . .	passim

PETITION FOR A WRIT OF CERTIORARI

Maria Baxter, et al. respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App. at 1-5) is an unreported per curiam decision.

JURISDICTION

The judgment of the court of appeals was entered on July 15, 1998, and a timely petition for rehearing was denied on August 11, 1998. This Court's jurisdiction stems from 28 U.S.C. § 1254(1).

RULE INVOLVED

Pertinent provisions of the Emergency Medical Treatment and Active Labor Act ("EMTALA"), 42 U.S.C. 1395dd, are set forth in the appendix (App. at 6-11.)

STATEMENT

This case involved, inter alia, an EMTALA claim for improper transfer pursuant to 42 U.S.C. § 1395dd(c). The district court's original jurisdiction stemmed, in part, from this federal claim.

Leo Scafidi suffered from serious kidney and cardiac problems and was admitted to Holy Cross Hospital of Silver Spring, Inc. ("Holy Cross") on 13 May 1995. He was treated with hemodialysis until about 1 June 1995. Thereafter, his wife, after consulting with his physicians, agreed to discontinue the dialysis procedure.

Mr. Scafidi remained at Holy Cross until 9 June 1995 when, with Mrs. Scafidi's alleged oral consent, Mr. Scafidi was transferred to Manor Healthcare, a nursing home ("Manor"). Before the transfer, Mrs. Scafidi was notified by Holy Cross that Holy Cross believed Mr. Scafidi's insurance was running out. Employees of Holy Cross and the individual Respondents pressured Mrs. Scafidi to transfer her husband to Manor. This is precisely the type of "patient dumping" conduct, motivated by lack of insurance, that Congress intended to halt by enacting EMTALA.

Mr. Scafidi was transferred, by the authority of an unknown medical employee "Jane Doe, RN" to Manor. Further, Manor was not a facility equipped to handle Mr.

Scafidi. Simply put, the transfer was not an "appropriate transfer" as required by 42 U.S.C. § 1395dd(c)(1)(B).

Mr. Scafidi's health records indicated that neither he nor Mrs. Scafidi were notified of Holy Cross's obligations under 42 U.S.C. § 1395dd(c). Further, the Scafidi's were not notified of the risk of the transfer, nor was a written consent obtained. Also, the medical records did not show a proper certification from a qualified medical person. In short, Holy Cross failed to satisfy any of the prerequisites enumerated in 42 U.S.C. § 1395(c)(1)(A).

Holy Cross, and its agents and physicians, clearly failed to meet any of the mandatory requirements of 42 U.S.C. § 1395dd (c)(1).

Mr. Scafidi was checked only once while at Manor, at least eight hours after admission, and found dead.

The district court rendered a summary judgment against Petitioners on the EMTALA count and the Fourth Circuit erroneously affirmed. In so doing, the courts relied upon case law that suggests that an EMTALA claimant must demonstrate that he or she recently presented to a hospital. Mr. Scafidi had been in the hospital for over two weeks at the time of the transfer. The Fourth Circuit inferred that after the claimant has been in the hospital for some time, his EMTALA rights evaporate.

The Fourth Circuit relied upon its

holdings in Bryan v. Rectors and Visitors of Univ. of Va., 95 F.3d 349 (4th Cir. 1996)(regarding failure to stabilize under 42 U.S.C. 1395dd(b)) and Vickers v. Nash Gen. Hosp., Inc., 78 F.3d 139 (4th Cir. 1996)(regarding disguising state malpractice cases as EMTALA claims). In fact, this case should have been analyzed under 42 U.S.C. § 1395dd(c). While subsections (a) and (b) apply when a person "comes to a hospital," subsection (c) applies when an individual is "at a hospital."

REASONS FOR GRANTING THE PETITION

The Fourth Circuit's error flows from two sources. First, the court misapplied the law by citing cases based upon subsections (a) and (b), instead of subsection (c). Second, and more fundamentally, the court has misinterpreted the clear language of the statute, thereby limiting its application to only recent hospital admittees. This interpretation is at odds with a state court of last resort, several federal district courts, and the Sixth Circuit.

A. The Fourth Circuit Misapplied Case Law Dealing With Other EMTALA Subsections

The Fourth Circuit relied upon two cases in its decision. First, the Court decided that it could find no "meaningful distinction between this case and Bryan v. Rectors and Visitors of Univ. of Va., 95 F.3d 349 (4th Cir. 1996)." (App. at 4.)

In fact, Bryan differs fundamentally from this case. In Bryan, the hospital entered a do not resuscitate order. The claimant brought a claim for failure to provide stabilizing treatment. Simply put, Ms. Bryan brought claims pursuant to subsections (a) and (b) of 42 U.S.C. § 1395dd.

The claimants, in this case, brought, inter alia, a claim for improper transfer pursuant to subsection (c) of 42 U.S.C. § 1395dd. In the Bryan case, no transfer took place. As demonstrated infra, the statutory language between the subsections differs and should result in different treatment of the Bryan case and this case.

Second, the Fourth Circuit relied upon Vickers v. Nash General Hosp., Inc., 78 F.3d 139 (4th Cir. 1996) for the proposition that EMTALA does not supplant state malpractice law. The instant case, however, while originally containing malpractice claims, also stated a claim for improper transfer under 42 U.S.C. 1395dd(c). In other words, Petitioners' EMTALA claim is not a mere claim for failure to diagnose or properly treat, but warrants independent analysis under EMTALA's transfer prohibitions.

Another factor present in this case, that was not present in the other cases cited by the Fourth Circuit, was Holy Cross's determination that Mr. Scafidi's insurance was running out. (App. at 3.) This was the type of conduct Congress was trying to foreclose by enacting EMTALA. This fact pattern provides the perfect

example of how "patient dumping" can occur weeks after the initial patient admission through the emergency room.

B. Disparate Interpretation of 42 U.S.C. § 1395dd(c)

Subsection (c) defines that class of protected individuals as "an individual at a hospital." The Fourth Circuit decided to read this definition in conjunction with the "emergency room" and immediacy requirements of subsections (a) and (b). Petitioners claim that a literal interpretation of this clause is proper, reading the subsections in the disjunctive. Petitioners' position is supported by the following:

In Smith v. Richmond Mem. Hosp., 416 S.E.2d 689 (Va. 1992), the Court determined that EMTALA's transfer requirements applied when an active emergency condition commenced after admission and initial stabilization. The Court found that the language "patient at a hospital", as set forth in subsection (c), meant that there was no requirement that the patient had recently arrived at the hospital. In other words, the immediacy requirement of subsections (a) and (b) were not read into subsection (c). Further, merely providing stabilizing treatment did not exempt the hospital from the transfer requirements of subsection (c). Id. at 692-93.

In McIntyre v. Schick, 795 F. Supp. 777 (E.D. Va. 1992), the Court determined that subsection (c) precluded transfer,

except when certification requirements are met, of any individual "at a hospital" whenever the emergency treatment is needed. Id. at 780.

Moreover, in Thornton v. Southwest Detroit Hosp., 895 F.2d 1131 (6th Cir. 1990), the Court determined that EMTALA did not apply to only those recently entering through the hospital's emergency room. "A fairer reading is that Congress sought to insure that patients with medical emergencies would receive emergency care." Id. at 1135. Essentially, the Sixth Circuit determined that EMTALA is not rendered impotent once the patient is wheeled from the emergency room to the hospital.

Finally, in Helton v. Phelps County Regional Med. Ctr., 817 F. Supp. 789, 791 (E.D. Mo. 1993) the court inferred that a patient already admitted and treated for two days still had a potential claim under subsection (c).

On the other hand, in James v. Sunrise Hosp., 86 F.3d 885 (9th Cir. 1996)(citing similar decisions from four circuit courts), a court decided to read all three subsections of EMTALA in the conjunctive. This resulted in application of the transfer restrictions of subsection (c) to recent emergency room admittees only.

The Ninth Circuit called the proper interpretation of subsection (c) a "close" question. The court further stated that it adopted a construction in a desire to

avoid an inter-circuit conflict. Finally, the court acknowledged, but ultimately failed to follow, what it called the "forcefully reasoned" opinion of the Virginia Supreme Court in Smith. Such a comment indicates that Supreme Court review of this issue is necessary and important. Avoidance of conflict should never trump forceful reason.

There is a disparity between the interpretations given subsection (c). The question boils down to straight-forward statutory construction with life and death ramifications. This ambiguity is too important to ignore.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

Opinion Entered With Reviewed Judgment

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

MARIE BAXTER; HELEN SCAFIDI;
ESTATE OF LEO SCAFIDI,
Plaintiffs-Appellants.

v.

HOLY CROSS HOSPITAL OF SILVER
SPRING, INCORPORATED; MANOR

NO. 97-1453
HEALTHCARE CORPORATION; STEPHEN
VACCAREZZA, MD; STEPHEN HELLMAN,
MD; RONALD J. SCHUMACHER; KATHY
WATERS; AMY JACOBS; JANE DOE, II,
RD,
Defendants-Appellees.

Appeal from the United States District Court
for the District of Maryland at Greenbelt.
Alexander Williams, Jr., District Judge,
(CA-96-1856-AW)

Argued: October 31, 1997

Decided: July 15, 1998

Before WIDENER and ERVIN, Circuit Judges,
and BULLOCK,
Chief United States District Judge for the

Middle District of North Carolina, sitting by designation.

Affirmed as modified by unpublished per curiam opinion.

COUNSEL

ARGUED: Stephen Lee Shelnutt, Arlington, Virginia for Appellants. Michael Thomas Wharton, WHARTON, LEVIN, EHRMANTRAUT, KLEIN & NASH, P.A., Annapolis, Maryland; Leonard Thomas Hackett, JACOBSON, MAYNARD, TUSCHMAN & KALUR, Columbia, Maryland; Michael J. Baxter, SMITH, SOMERVILLE & CASE, Baltimore, Maryland, for Appellees. ON BRIEF: C. Russell Twist, Arlington, Virginia for Appellants, Debra S. Block, WHARTON, LEVIN, EHRMANTRAUT, KLEIN & NASH, P.A., Annapolis, Maryland for Appellees Holy Cross, Waters & Jacobs.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

The plaintiffs, who are the widow, child, and estate of Leo Scafidi, sued Holy Cross Hospital and Silver Spring Manor Healthcare Corporation and various physicians and other health care providers on account of the death of Leo Scafidi in June, 1995. The district court dismissed all of their claims, and the plaintiffs appeal a part of the dismissals. Because the district court and the parties have considered affidavits and health records such as hospital records and physicians' and nurses; notes with respect to the case of Scafidi, we consider the action of the district court as on a motion for summary judgment unless otherwise indicated. We affirm, as modified.

Leo Scafidi was admitted to Holy Cross Hospital on May 13, 1995, suffering from kidney and cardiac problems. These are described as end-state renal disease, atrial fibrillation with rapid ventricular response, hypertension and chronic obstructive pulmonary disease. He was treated, and he received hemodialysis on Mondays, Wednesdays and Fridays until about June 1, 1995, when his wife, after consulting with his physician about difficulty with the dialysis procedure, determined that the dialysis treatment should be discontinued, which it was. Scafidi remained at Holy Cross until June 9, when, with Mrs. Scafidi's consent, he was transferred to Manor Healthcare, a nursing home, where he died the next day. The Scafidis had been advised a day or so before by Holy Cross that Mr. Scafidi

would not have to leave that hospital, abut that from that point on, he would be responsible for his own bills.

Following Scafidi's death, the plaintiffs sued Holy Cross Hospital and Manor Health Care and, as well, various physicians and health care personnel who had been connected with Scafidi's treatment during his last illness.

In Count I,1 the plaintiffs as the court to hold that Maryland Code § 11-108 is unconstitutional, as it provides a cap on like personal injury judgments. The court held that the cap on damages was valid, and this is not appealed.

In Count II, the defendants were sued under the Emergency Medical Treatment and Active Labor Act, 42 U.S.C. § 1395dd, referred to as EMTALA. The claim is that Scafidi was not stabilized within the meaning of the statue. The district court dismissed this claim, and the plaintiffs appeal.

The claims for abandonment of medical care, failure to treat, negligent treatment, and failure to treat a dermatological skin condition, Counts IV, V, VI and VII, the district court decided could not be pursued because they were medical malpractice claims which had not been processed under the Maryland Healthcare Malpractice Claims Act, Maryland Code Courts and Judicial Procedure § 3-2A-02(a)(1). This decision of the district court is appealed.

The district court declined to exercise supplemental jurisdiction of the common law fraud claims, Count III, and this ruling is not appealed.

A.

Scafidi had been in Holy Cross Hospital from May 13, 1995 until

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1 The numbering of the courts is our own.

June 9, 1995, when he was transferred to Manor Healthcare. He had received dialysis treatments until shortly before June 1, 1995, a period of something more than two weeks. The decision to discontinue the dialysis treatments, which may be characterized as the core of the complaint in this case, was made by Mrs. Scafidi, after consultation with her husband's physician who had attended Scafidi while in the hospital, so there cannot be any colorable contention that his condition had not been stabilized within the meaning of EMTALA.

We are unable to find any meaningful distinction between this case and Bryan v. Rectors and Visitors of Univ. of Virginia, 95 F.3d 349 (4th Cir. 1996), in which, as here, the hospital had entered a do-not-resuscitate order, although in that case the hospital's order in question was against the family's wishes instead of with the consent of the wife, as here. In Bryan, we relied on the fact that the only

actions by the hospital claimed to be violations of EMTALA began with the entry of the anti-resuscitation order. Here they began with the cessation of dialysis treatment. In Bryan, we noted that the decedent received stabilizing treatment for 12 days, just as Scafidi in our case received stabilizing treatment for something over two weeks. Just as Bryan held there was no liability under EMTALA, we are of that opinion in this case.

Vickers v. Nash General Hospital, Inc., 78 F.3d 139(4th Cir. 1996), is in accord with our decision, and we apply those principals here. In Vickers, we stated that "[q]uestions regarding whether a physician or other hospital personnel failed properly to diagnose or treat a patient's condition are best resolved under existing and developing state negligence and medical malpractice theories of recover," 78 F.3d at 142, and that "[c]laims or misdiagnosis or inadequate treatment are left to the state malpractice area." Thus, we affirm the entry of summary judgment in favor of the defendants on the claim under EMTALA.

B.

We affirm the district court's dismissal of the claims for abandonment of medical care, failure to treat, negligent treatment, and failure to treat a dermatological skin condition as medical malpractice claims, which must first be processed under the Maryland Healthcare Malpractice Claims Act, Maryland Code Courts and Judicial Procedure § 3-2A-

02(a)(1). See Davison v. Sinai Hospital of Baltimore, Inc., 617 F.2d 361 (4th Cir. 1980), affirming, on the opinion of the district court, Davison v. Sinai Hospital, 462 F.Supp. 788 (D.Md. 1978). But the dismissal of the state malpractice claims should be without prejudice. Davison, 462 F.Supp. 781. to that extent the judgment of the district court is modified.

C.

The defendants have asserted other defenses which may well have validity, but we express no opinion upon them here.

The judgment of the district court is accordingly

AFFIRMED AS MODIFIED. 2

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2 On April 17, 1998, the defendants, Hellman, Vaccarezza, and Schumacher, notified us of the insolvency of their insurance company, PIE Mutual Insurance Company, as found by the Court of Common Pleas, Franklin County, Ohio, on March 23, 1998. They take the position that under Maryland Code, Insurance Article, § 9-315(a), all proceedings in this matter should be stayed for a period of not less than 60 days from March 23, 1998. The other defendants did not oppose such a stay, however the plaintiffs did.

Accordingly, we have taken no action in the case until the date of the filing of

this opinion, and the purpose of the motion has been achieved. The motion is dismissed as moot.

Order Denying Rehearing (4th Circuit)

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

August 11, 1998

No. 97-1453

CA-96-1856-AW

MARIE BAXTER; HELEN SCAFIDI; ESTATE OF LEO SCAFIDI

Plaintiffs - Appellants

v.

HOLY CROSS HOSPITAL OF SILVER SPRING, INCORPORATED; MANOR HEALTHCARE CORPORATION; STEPHEN VACCAREZA, MD; STEPHEN HELLMAN, MD; RONALD J. SCHUMACHER; KAREN WATERS; AMY JACOBS, JANE DOE, II, RN

Defendants - Appellees

* * * * * * * * * * * * *

On Petition for Rehearing with Suggestion for Rehearing In Banc

The appellants' petition for rehearing and suggestion for rehearing in banc were submitted to this Court. As no member of this Court or the panel requested a poll on the suggestion for

rehearing in banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and suggestion for rehearing in banc are denied.

For the Court,

/s/ Patricia S. Connor
CLERK

District Court's Order Denying Post-Trial Motion

Maria Baxter, et al
Plaintiffs

v.

Holy Cross Hospital of Silver Spring, Inc., et al.
Defendants

Civil Action No. AW-96-1856

ORDER

After considering Plaintiff's Motion to Alter and Amend Judgment, the Court ruling will stand. Plaintiffs have not cited any additional case law nor arguments which would convince the Court to reconsider its decision. Accodingly, it is this 11th day of March 1997, ORDERED:

1. That Plaintiffs' Motion to Alter and Amend Judgment BE, and the same hereby is, Denied; and

2. That the Court's Order of February 20, 1997 will stand; and

3. That the Clerk of the Court mail copies of this Order to all counsel of record.

/S/
Alexander Williams, Jr.
United States District Judge

The District Courts' Original Order

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MARIA BAXTER, et al.,

Plaintiffs,

v.

HOLY CROSS HOSPITAL OF,
Civil No. AW-96-1856
SILVER SPRING, INC., et al.

Defendants.

ORDER

In accordance with the Memorandum Opinion and the reasons stated by the Court at the hearing, it is this 20th day of February, 1997 ORDERED:

1. That defendants Holy Cross Hospital of Silver Spring, Incorporated, Manor Healthcare Corporation d/b/a Manor Care Silver Spring Nursing Home and rehabilitation Center, Stephen Vaccarezza, M.D., Stephen Hellman, M.D., Ronald j. Schmacher, M.D., Kathy Waters, and Amy Jacob's Motions to Dismiss Plaintiffs' claim BE, and the same hereby ARE, GRANTED; and

2. That Plaintiffs' Motion to Amend their Complaint to change the naming of FNU Schumacher, M.D. to Ronald J. Schumacher, M.D. BE; and the same hereby

IS, GRANTED; and

3. That in light of the above ruling, all other motions before the Court in this case BE, and the same hereby ARE DENIED as MOOT; and

4. That this case is CLOSED; and

5. That the Clerk of the Court mail copies of the Memorandum Opinion and this Order to all counsel of record.

_____/S/_____
Alexander Williams, Jr.
United States District
Court Judge

DISTRICT COURT'S OPINION

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MARIA BAXTER, et al.,	*
	*
Plaintiffs,	*
	*
v.	*
	*
HOLY CROSS HOSPITAL OF,	*
Civil No. AW-96-1856	
SILVER SPRING, INC., et al.	*
	*
Defendants.	*
	*
	*

MEMORANDUM OPINION

Presently pending before the Court for consideration are Defendants' Motion to Dismiss. Plaintiffs have filed responses to which Defendants have replied. Additionally, the Court held a hearing in this matter on February 20, 1997. After considering the entire file and listening carefully to oral arguments presented at the hearing, the Court will grant Defendants' Motions to Dismiss Plaintiffs' entire Complaint and deny Plaintiffs request under their declaratory judgment action.

I. BACKGROUND AND PROCEDURAL HISTORY

This action arose from the death of Leo Scafidi ("the decedent"). On or about May 13, 1995, the decedent was allegedly admitted into defendant Holy Cross Hospital of Silver Spring, Incorporated

("Holy Cross") suffering from kidney and cardiac problems. On or about june 1, 1995, the decedent was allegedly terminated from kidney dialysis. Then on June 9, 1995, the decedent was allegedly transferred to defendant Manor Healthcare Corporation d/b/a Manor Care Silver spring Nursing Home and Rehabilitation Center ("Manor Healthcare"). On the next day, the decedent died at defendant Manor Healthcare's facility.

Maria Baxter, Helen Scafidi, and the estate of Leo Scafidi ("Plaintiffs") filed the instant action against defendants Holy Cross, Manor Healthcare, Stephen Vaccarezza, M.D. ("Vaccarezza"), Stephen Hellman, M.D. ("Hellman"), FNU Schumacher, M.D.[1] ("Schumacher"), Kathy Waters ("Waters"), Amy Jacobs ("Jacobs"), and Jane Doe, R.N. ("Doe") on June 14, 1996. Count I of Plaintiffs complaint appears to be a declaratory judgment action requesting the Court to declare Maryland's limitations on noneconomic damages in personal injury actions unconstitutional. Next, Plaintiffs assert the following claims against defendant Holy Cross: (1) violation of the Emergency Medical Treatment and Active Labor Act ("EMTALA"), 42 U.S.C. § 1395dd; (2) abandonment of medical care; (3) negligent treatment; and (4) failure to treat dermatological skin condition. Additionally, Plaintiffs

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[1] At the hearing, the Court permitted Plaintiffs to amend their Complaint to change the naming of this party to Ronald J. Shumacher, M.D.

allege a violation of EMTALA and a failure to treat claim against defendant Manor Healthcare. Also, Plaintiffs allege a failure to treat claim against defendants Vaccarezza and Hellman. Finally, Plaintiffs assert a claim for common law fraud against defendants Jacobs and Waters.

II. Standard of Review

Under Fed. R. Civ. P. 12(b)(6), a court should not dismiss a complaint unless it appears beyond doubt that the plaintiff can prove no set of facts that would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). For purposes of a motion to dismiss, "all allegations in the [complaint] are taken as true and all contravening allegations are taken to be false." See generally 5A C. Wright & A. Miller, Federal Practice and Procedure § 1368 at 520 (1990).

II. Discussion

A. Count I- Declaratory Judgment Action

The Court finds that Plaintiffs have failed to show that Maryland's statutory limitation on noneconomic damages for personal injury actions is unconstitutional. As a result, Plaintiff's request for a declaratory judgment as to such will be denied.

B. Count II- Violation of EMTALA

It is well established that EMTALA is a "limited, 'anti-dumping' status, not a federal malpractice status." Bryan v. Rectors and Visitors of Univ. of Virginia, 95 F.3d 349, 351 (4th Cir. 1996). The Fourth Circuit has found that "[EMTALA's] core purpose is to get patients into the system who might otherwise go untreated

and be left without a remedy because traditional medical malpractice law afford no claim for failure to treat." Id. (citing Brooks v. Maryland Gen. Hosp. Inc., 996 F.2d 708, 710 (4th Cir. 1993). Indeed, the courts and the legislative history verify that Congress's purpose in enacting EMTALA is to prevent a hospital from turning away patients from its emergency medical room. Id.

However, the requirement under EMTALA that the hospital stabilize the condition of a patient is intended to govern the hospital's care of a patient during a certain period of time. This time frame is "okay in the immediate aftermath of the act of admitting [a person] for emergency treatment and while [the hospital] consider[s] whether it [will] undertake long-term full treatment or instead transfer the patient to a hospital that [can] and [will] undertake that treatment." Id. at 352. Once this requirement is met, the patient's care becomes the legal responsibility of the hospital and the treatment physicians. Id. at 351. Any legal problems that arise with respect to the patient's care at this time is not regulated by EMTALA, but by Maryland's medical malpractice law, which EMTALA did not intend to preempt. Id. at 351.

Here, Plaintiffs assert that defendants Holy Cross and Manor Healthcare violated EMTALA when defendant Holy Cross allegedly transferred the decedent to defendant Manor Healthcare's facility on

June 9, 1995.[2] More specifically, Plaintiffs assert that the decedent was not in a stabilized medical condition at the time of the transfer. Additionally, Plaintiffs maintain that defendant Holy Cross failed to follow certain procedures under EMTALA before sending the decedent to defendant Manor Healthcare. Also, Plaintiffs allege that defendant Manor Healthcare failed to have qualified personnel available to provide adequate treatment of the decedent.

The decedent was allegedly admitted to defendant Holy Cross on May 13, 1995. Additionally, the alleged failure to stabilize the decedent and the alleged unlawful transfer under EMTALA took place on June 9, 1995. This was thirty days after the decedent was admitted. Therefore, the alleged conduct by defendants Holy Cross and Manor Healthcare does not fall within the time period which EMTALA was designed to regulate. Indeed, the physician-patient relationship had already been established at the time of the transfer. As a result, Plaintiffs allegations under their EMTALA claim are better left for resolution under Maryland's medical malpractice law.

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[2] Although Plaintiffs mention defendants Waters and Jacobs in the allegations of their Complaint under this Court, Plaintiffs cannot maintain a civil suit for damages against a private individual under EMTALA. Baber v. Hospital Corp. of America, 997 F.2d 872, 877 (4th Cir. 1992)

Accordingly, this claim must be dismissed.

C. Counts IV-VII - Medical Malpractice Claims

Under Counts IV through VII, Plaintiffs assert claims for abandonment of medical care, failure to treat, negligent treatment, and failure to treat a dermatological skin condition. The Court finds that these are traditional medical malpractice claims which are covered by the Maryland Health Care Malpractice Claims Act, Md. Cts. & Jud. Proc. Code Ann. § 3-2A-02(a)(a) ("the Act").[3] See Cannon v. McKen, 296 Md. 27, 34-37 (1983) (discussing the type of claims which fall under the Act). The Act prevents a Plaintiff from bring (sic) medical malpractice claims without first complying with its relevant provisions. Moreover, the Act applies when a Plaintiff is before a federal court requesting that it hear such claims. See Davidson v. Sinai Hospital of Baltimore, Inc., 617 F.2d 361, 362 (4th Cir. 1980).

In this case, Plaintiffs failed to comply with the Act. They did not present

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[3] Section 3-2A-02(a)(1) of the Act states:

All claims, suits, and actions . . . by a person against a health care provider for medical injury allegedly suffered by the person in which damages of more than the limit of the concurrent jurisdiction of the District court are sought are subject to and shall be governed by the provisions of this subtitle.

their medical malpractice claims to arbitration. Additionally, Plaintiffs have presented no proof that it formally waived arbitration under the Act. Consequently, Plaintiffs claims for abandonment of medical care, failure to treat, negligent treatment, and failure to treat a dermatological skin condition must be dismissed.

d. Count III- Common Law Fraud

The Court will decline to exercise its supplemental jurisdiction over Plaintiffs' remaining common law fraud claim.

III. Conclusion

For the reasons set forth above and on the record during the hearing, Defendants' Motions to Dismiss Plaintiffs' entire Complaint will be granted. A separate Order will follow.

/S/
Alexander Williams, Jr.
United States District Judge

EMTALA - Statutory Language

§1395dd. Examination and treatment for emergency medical conditions and women in labor

(a) Medical screening requirement

In the case of a hospital that has a hospital emergency department, if any individual (whether or not eligible for benefits under this subchapter) comes to the emergency department and a request is made on the individual's behalf for examination or treatment for a medical condition, the hospital must provide for an appropriate medical screening examination within the capability of the hospital's emergency department, including ancillary services routinely available to the emergency department, to determine whether or not an emergency medical condition (within the meaning of subsection (e)(1) of this section) exists.

(b) Necessary stabilizing treatment for emergency medical conditions and labor

(1) In general

If any individual (whether or not eligible for benefits under this subchapter) comes to a hospital and the hospital determines that the individual has an emergency medical condition, the hospital must provide either--

(A) within the staff and

facilities available at the hospital, for such further medical examination and such treatment as may be required to stabilize the medical condition, or

(B) for transfer of the individual to another medical facility in accordance with subsection (c) of this section.

(2) Refusal to consent to treatment

A hospital is deemed to meet the requirement of paragraph (1)(A) with respect to an individual if the hospital offers the individual the further medical examination and treatment described in this paragraph and informs the individual (or a person acting on the individual's behalf) of the risks and benefits to the individual of such examination and treatment, but the individual (or a person acting on the individual's behalf) refuses to consent to the examination and treatment. The hospital shall take all reasonable steps to secure the individual's (or person's) written informed consent to refuse such examination and treatment.

(3) Refusal to consent to transfer

A hospital is deemed to meet the requirement of paragraph (1) with respect to an individual if the hospital offers to transfer the

individual to another medical facility in accordance with subsection (c) of this section and informs the individual (or a person acting on the individual's behalf) of the risks and benefits to the individual of such transfer, but the individual (or a person acting on the individual's behalf) refuses to consent to the transfer. The hospital shall take all reasonable steps to secure the individual's (or person's) written informed consent to refuse such transfer.

(c) Restricting transfers until individual stabilized

(1) Rule

If an individual at a hospital has an emergency medical condition which has not been stabilized (within the meaning of subsection (e)(3)(B) of this section), the hospital may not transfer the individual unless--

(A)(i) the individual (or a legally responsible person acting on the individual's behalf) after being informed of the hospital's obligations under this section and of the risk of transfer, in writing requests transfer to another medical facility,

(ii) a physician (within the meaning of section 1395x(r)(1) of this title) has signed a

certification that based upon the information available at the time of transfer, the medical benefits reasonably expected from the provision of appropriate medical treatment at another

medical facility outweigh the increased risks to the individual and, in the case of labor, to the unborn child from effecting the transfer, or

(iii) if a physician is not physically present in the emergency department at the time an individual is transferred, a qualified medical person (as defined by the Secretary in regulations) has signed a certification described in clause (ii) after a physician (as defined in section 1395x(r)(1) of this title), in consultation with the person, has made the determination described in such clause, and subsequently countersigns the certification; and

(B) the transfer is an appropriate transfer (within the meaning of paragraph (2) to that facility.

A certification described in clause (ii) or (iii) of subparagraph (A) shall include a summary of the risks and benefits upon which the certification is based.

(2) Appropriate transfer

An appropriate transfer to a medical facility is a transfer--

(A) in which the transferring hospital provides the medical treatment within its capacity which minimizes the risks to the individual's health and, in the case of a woman in labor, the health of the unborn child;

(B) in which the receiving facility--

(i) has available space and qualified personnel for the treatment of the individual, and

(ii) has agreed to accept transfer of the individual and to provide appropriate medical treatment;

(C) in which the transferring hospital sends to a receiving facility all medical records (or copies thereof), related to the emergency condition for which the individual has presented, available at the time of the transfer, including records related to the individual's emergency medical condition, observations of signs or symptoms, preliminary diagnosis, treatment provided, results of any tests and the informed written consent or certification (or copy thereof) provided under

paragraph (1)(A), and the name and address of any on-call physician (described in subsection (d)(1)(C) of this section) who has refused or failed to appear within a reasonable time to provide necessary stabilizing treatment;

(D) in which the transfer is effected through qualified personnel and transportation equipment, as required including the use of necessary and medically appropriate life support measures during the transfer; and

(E) which meets such other requirements as the Secretary may find necessary in the interest of the health and safety of individuals transferred.

Original Complaint
(EMTALA COUNT ONLY)

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
MARYLAND SOUTHERN DIVISION

* * *

ORIGINAL COMPLAINT

1. Plaintiff Maria Baxter is a Citizen of the State of Maryland and is a resident of this District.
2. Plaintiff Helen Scafidi is a citizen of the State of Maryland and is a resident of this District.
3. Plaintiff the Estate of Leo Scafidi is a citizen of the State of Maryland and is a resident of this District.
4. Defendant Holy Cross Hospital is a citizen of the State of Maryland and is a resident of this District.
5. Defendant Manor Health Care Nursing Home is a citizen of the State of Maryland and is a resident of this District.
6. Defendant Stephen Vaccareza is a citizen of the State of Maryland and a resident of this District.
7. Defendant Stephen Hellman is a citizen of the State of Maryland and is a resident of this District.
8. Defendant FNU Schumacher is a citizen of the State of Maryland and is a resident of this District.
9. Defendant Kelly Waters is a citizen of the State of Maryland and is a resident of this District.
10. Defendant Amy Jacobs is a citizen of the State of Maryland and is a resident of this District.

11. Defendant Jane Doe is a citizen of the State of Maryland and is a resident of this District.
12. Jurisdiction in this case is appropriate pursuant to 28 U.S.C. 1331 and 28 U.S.C. 1367.

STATEMENT OF CASE

13. On 13 May 1995, Leo Scafidi, the husband of Plaintiff Helen Scafidi and the father of Plaintiff Maria Baxter was admitted to Defendant Holy Cross Hospital suffering from kidney and cardiac problems. At such time he was coherent and alert.
14. On 1 June 1995, Defendant Hellman, without consulting a second doctor to determine whether Leo Scafidi was or was not competent to make medical decisions, terminated Leo Scafidi from kidney dialysis.
15. At certain times prior to 1 June 1995, and at certain times thereafter, Leo Scafidi was competent and sufficiently rational to make informed health care decisions related to his treatment.
16. Such termination was contrary to Maryland law.
17. On 9 June, 1995, Defendant Holy Cross Hospital transferred Mr. Scafidi to Defendant Manor Health Care Nursing Home. Mr. Scafidi was discharged as a result of an unnamed nurse (after this Defendant Jane Doe) signing discharge and transfer papers. No appropriate health care professional within the meaning of 42 U.S.C. 1396dd countersigned the discharge papers. Mr. Scafidi's family did not

accompany him to the nursing home. On 10 June 1995, within 24 hours of the time of transfer, Mr. Scafidi died alone at the Defendant Manor Health Care Nursing Home.

* * *

EMTALA CLAIM

24. Plaintiffs hereby incorporate Paragraphs 1 through [17] above stated.
25. On 9 June 1995, Leo Scafidi was a patient at Defendant Holy Cross Hospital.
26. On 9 June 1995, Leo Scafidi was not in a stabilized medical condition within the meaning of 42 U.S.C. 1395dd(E)(3)(B).
27. Despite not having either Mr. Scafidi or a legally responsible person acting on his behalf not being informed of the Defendant's hospital obligations under EMTALA, or of the risk of transfer, the Defendant Hospital did not obtain a request in writing for transfer to the Defendant Manor HealthCare (sic) Nursing Home.
28. Prior to the transfer, no physician within the meaning of 42 U.S.C. 1395x(r)(1) had signed a certification that based on the information available at the time of transfer, the medical benefits reasonably expected from the provision of medical services at Defendant Manor HealthCare (sic) Nursing Home outweighed the increased

risk to Mr. Scafidi from effecting the transfer.

29. No qualified medical person had signed a certification required under 42 U.S.C. 1395dd(c)(1)(2) after a physician (as defined in 42 U.S.C. 1395x(4)(1)),(sic) in consultation with such person had made the determination described in such clause and subsequently countersigned the designation.

30. The transfer to Defendant Manor HealthCare (sic) Nursing Home was an inappropriate transfer within the meaning of 42 U.S.C. 1395dd(c)(2).

31. The Defendant Manor HealthCare (sic) Nursing Home failed to have qualified personnel available for the treatment of Mr. Scafidi.

32. The Defendant Manor Health Care Nursing Home failed to provide appropriate medical treatment to Mr. Scafidi.

33. The transfer to Defendant Manor HealthCare (sic) Nursing Home was based in part upon a faulty perception by either Kathy Waters or Amy Jacobs, either singly or jointly, that Mr. Scafidi's medical insurance would be exhausted if no transfer was made. Plaintiffs allege that each have suffered emotional distress s (sic) a result of the above described violations of EMTALA and seeks all available damages for personal injury in the State of Maryland.

* * *